

Title 210 – NEBRASKA DEPARTMENT OF INSURANCE

Chapter 55 - RULE TO DEFINE STANDARDS AND DIRECTOR'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

001. Authority. This rule is adopted and promulgated by the Director of Insurance pursuant to Neb.Rev.Stat. §44-101.01.

002. Purpose. The purpose of this rule is to set forth the standards and guidelines which the Director may employ to identify insurers that are in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance as provided for in Neb.Rev.Stat. §44-4809, §44-4810, §44-4812 and §44-4817.

003. Scope. This rule applies to all domestic and foreign insurers.

004. Standards. The following standards, either singly or a combination, may be considered by the Director to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public. The Director may consider:

004.01 Adverse findings reported in financial condition and market conduct examination reports;

004.02 The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

004.03 The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net

investment income which could lead to an impairment of capital and surplus;

004.04 The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

004.05 The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

004.06 The insurer's operating loss in the last twelve month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50% of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

004.07 Whether an affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;

004.08 Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which in the opinion of the Director may affect the solvency of the insurer;

004.09 Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

004.10 The age and collectability of receivables;

004.11 Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

004.12 Whether management or an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

004.13 Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has

made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

004.14 Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

004.15 Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

005. Director's authority.

005.01 For the purposes of making a determination of an insurer's financial condition under this rule, the Director may:

005.01A Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

005.01B Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

005.01C Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

005.01D Increase in the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

005.02 If the Director determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the Director may, upon his determination, take such action as is authorized by the Insurers Supervision, Rehabilitation and Liquidation Act, Neb.Rev.Stat. §44-4801, et seq. In addition to taking any action authorized by §44-4801 et seq. and §44-134, the Director's order may require such insurer to:

005.02A Reduce the total amount of present and potential liability for policy benefits by reinsurance;

005.02B Reduce, suspend or limit the volume of business being accepted or renewed;

005.02C Reduce general insurance and commission expenses by specific methods;

005.02D Increase the insurer's capital and surplus;

005.02E Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

005.02F File reports in a form acceptable to the Director concerning the market value of an insurer's assets;

005.02G Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Director deems necessary;

005.02H Document the adequacy of premium rates in relation to the risks insured; or

005.02I File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such format as promulgated by the Director.

006. Administrative and judicial review. Any decision or order of the Director pursuant to this rule shall be subject to an administrative hearing and judicial review in accordance with the Administrative Procedure Act at the instance of any party to the proceedings whose interests are substantially affected.

007. Severability. If any provisions of this regulation be held invalid, the remainder shall not be affected.